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| 10/737,235      | 12/16/2003  | Jody Lynn Hoying     | 9456                | 6351             |

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| EXAMINER |
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BEFUMO, JENNA LEIGH

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| ART UNIT | PAPER NUMBER |
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1771

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07/26/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                       |  |  |
|------------------------------|---------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/737,235  | <b>Applicant(s)</b><br>HOYING, JODY LYNN |  |
|                              | <b>Examiner</b><br>Jenna-Leigh Befumo | <b>Art Unit</b><br>1771                  |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The response filed on May 7, 2007 has been received. Claims 1 and 3 – 15 are pending.

#### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1, 3 – 5, 8, 12, and 15 stand rejected under 35 U.S.C. 102(e) as being anticipated by Provost et al. for the reasons of record.
4. Claims 1, 3, 6 – 10, 12, 13, and 15 stand rejected under 35 U.S.C. 102(b) as being anticipated by Sorimachi et al. for the reasons of record.

#### ***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claim 11 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Sorimachi et al. in view of Kotek et al. (6,120,718) for the reason of record.
7. Claims 1, 3 – 11, and 13 – 15 stand rejected under 35 U.S.C. 102(b) as being anticipated by Hansson (6,048,600) for the reasons of record.

#### ***Double Patenting***

8. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 27 of copending Application No. 10/737,306 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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9. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 21 of U.S. patent 7,172,801 (formerly Application No. 10/737,307) for the reasons of record.

US Application 10/737,307 been allowed and is now patent No. 7,172,801. Thus, the rejection has been changed to reflect the most recent status of the application and is no longer a provisional rejection.

10. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 20 of copending Application No. 10/737,430 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 44 of copending Application No. 10/737,640 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

12. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 25 of copending Application No. 11/156,020 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Response to Arguments***

13. Applicant's arguments filed November 8, 2006 have been fully considered but they are not persuasive. The applicant argues that Provost et al. and Sorimachi et al. fail to teach a discrete region

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with a distinct linear orientation and a longitudinal axis (response, pages 2 – 8). Again, it is noted that the applicant is arguing that the component with the linear orientation must also create the longitudinal axis in the MD-CD plane. However, these are listed as two separate features. The claim recites that the discrete region has a linear orientation and a longitudinal axis, it does not state the linear orientation is the same as the longitudinal axis or that the linear orientation is in the MC-CD plane, it is recited as a separate feature.

Alternatively, as argued previously, the longitudinal axis and linear orientation are imaginary lines which can be mapped onto the shape of the discrete region. A line can be mapped over any shape region regardless of whether the length of the shape in the machine direction is larger, smaller or the same size as the length of the shape in the cross-machine direction. There is nothing that requires a longitudinal axis or linear orientation to be placed in a specific direction within an individual shape or exclude squares or circular shapes, as set forth previously. And the applicant has provided no convincing evidence that these terms should be given some inherent definition that would exclude any shape which has a width equal to its length.

Further, with regards to claims 14 and 15, the applicant argues that the prior art does not teach a diaper or absorbent material. However, these limitations are considered intended use since the applicant has failed to recite any features of the diaper or absorbent product other than they comprise the composite nonwoven fabrics. It has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitation. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Thus, the rejections are maintained.

Finally, the applicant argues that Hannson fails to teach fiber portions which have been reoriented substantially orthogonal to the MD-CD plane and extending toward the garment facing side of the of the second layer (response, pages 8 – 9). The applicant argues that the crests extend away from the second layer. However, the composite material includes a structure, which when flipped over, would turn the

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valley into the crests, comprising fibers which are oriented substantially orthogonal to the MD-CD direction of the fabric, and the valley portions extend toward and contact the second layer of the composite material. Thus, the features of Hansson meet the structural requirements.

Further, the applicant argues that the layers are not disposed in a face-to-face relationship to form a laminate. However, the applicant does not require that both layers need to be flat when they are disposed in a face-to-face relationship. The topes of the crest are part of the face of the corrugated layer and it is disposed in contact to the face of the second layer. The laminate is formed by contacting that faces of each layer. While, the layers do not have continuous contact with each other, the limitation does not require that the relationship is continuous, but just that the layers are disposed in a face-to-face relationship of some manner.

Further, with regards to claims 14 and 15, the applicant argues that the prior art does not teach a diaper or absorbent material. However, these limitations are considered intended use since the applicant has failed to recite any features of the diaper or absorbent product other than they comprise the composite nonwoven fabrics. It has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitation. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Thus, the rejections are maintained.

### ***Conclusion***

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action

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is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jlb  
July 22, 2007

  
JENNA BEFUMO  
PRIMARY EXAMINER